

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 204 of 1984

with

CRIMINAL APPEALS Nos. 205 to 211 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? Yes

2. To be referred to the Reporter or not? No

3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?

No

STATE OF GUJARAT

Versus

JITENDRA DAMJIBHAI

Appearance:

Shri S.T. Metha, Addd. Public Prosecutor, for the
Appellant-State (in all matters)

Shri A.B. Munshi, Advocate, for the Respondent
(in Criminal Appeals Nos. 204 of 1984, 206 of
1984, 207 of 1984 and 209 of 1984(amicus curie)

Smt. N.I. Desai, Advocate, for Shri Jashbhai P.
Patel, Advocate, for the Respondent (in Criminal
Appeals Nos. 205 of 1984, 208 of 1984, 210 of
1984 and 211 of 1984)

ORAL JUDGEMENT

All these appeals arise from the common judgment and order of acquittal passed by the learned Additional Sessions Judge at Surat on 30th November 1983 in Criminals Appeals Nos. 34 to 38 of 1983 and 42 of 1983 and 52 of 1983 and 53 of 1983. Thereby the learned Additional Sessions Judge accepted the appeals of the respective accused against the judgment and order of conviction and sentence passed by the learned Judicial Magistrate (First Class) at Kathor in 8 different cases holding the accused in each case guilty of the offence punishable under sec. 123 read with sec. 42(1) of the Motor Vehicles Act, 1939 (the Act for brief) and sentencing each accused to fine of Rs. 1000/- in default simple imprisonment for one month. Common questions of law and fact are found arising in all these appeals. I have therefore thought it fit to dispose of all these appeals by this common judgment of mine.

2. The facts giving rise to all these appeals before this Court are few. It appears that in all 8 tourist buses holding contract carriage permits were involved. They were in the course of their journey to Bombay on 21st May 1982. Some of them had started from Ahmedabad and some of them had started from Rajkot. All these buses were intercepted near what is popularly known as Kamrej Chokdi at about 1.30 a.m. on 22nd May 1982 by one R.T.O. Inspector. He found that each bus was not used as a tourist bus but it was used as a passenger bus. According to him, it was not a case of group booking of passengers but it was a case of individual booking of passengers. The contract carriage permit was found by him to have been converted into a stage carriage permit. He thereupon gave one memo to the driver of each tourist bus and obtained each driver's signature therebelow. On the basis of such memo, in all 8 different complaints were filed against the owners of 8 different tourist buses in the Court of the Judicial Magistrate (First Class) at Kathor for the offence punishable under sec. 123 read with sec.42(1) of the Act. The plea of each accused was recorded. No accused pleaded guilty to the charge. All of them were therefore tried. After recording the prosecution evidence and after hearing arguments, by his judgment and order separately passed in each case, the learned Judicial Magistrate (First Class) at Kathor convicted the accused in each case of the offence punishable under sec. 123 read with sec. 42(1)

of the Act and sentenced each of them to fine of Rs. 1000/- in default simple imprisonment for one month. That aggrieved the accused in each case. All of them carried the matter separately in appeal before the Sessions Court at Surat. They came to be registered as Appeals Nos. 34 to 38 of 1983, 42 of 1983 and 52 and 53 of 1983. They appear to have been assigned to the learned Additional Sessions Judge at Surat for trial and disposal. All the eight appeals were heard together. By his common judgment and order passed on 30th November 1983 in all the aforesaid eight appeals, the learned Additional Sessions Judge at Surat accepted the appeals and set aside the impugned judgment and order of conviction and sentence in each case and acquitted the accused in each case of the offences with which they were charged. The State Government was aggrieved thereby. It has therefore preferred a separate appeal in each case by leave of this Court for questioning the correctness of the aforesaid common judgment and order of acquittal passed by the learned Additional Sessions at Surat in the appeals against conviction and sentence in question.

3. It was the case of the prosecution that the tourist buses were given what is popularly known as the contract carriage permit under the Act. One of the conditions attached thereto was that no bus having a contract carriage permit could be used to book individual passengers. The contract carriage permit was not produced on the record of the case. The prosecution could not prove what conditions were attached to the contract carriage permit. It is not brought on record whether or not a condition was attached to the contract carriage permit in each case to the effect that the vehicle in question shall not be used for carrying individual passengers. This fact has weighed heavily with the learned appellate Judge in setting aside the order of conviction in each case and acquitting the accused in each case.

4. I think this reasoning on the part of the learned appellate Judge is unassailable. It needs no telling that in a criminal case the guilt has to be brought home to the accused beyond any reasonable doubt. There is no provision in the Act for raising a presumption to the effect that on mere allegation that the bus was granted a stage carriage permit a presumption has to be raised to the effect that a condition was attached thereto for not carrying individual passengers therein. If the prosecution wants to rely on a breach of a condition or conditions attached to a contract carriage permit constituting an offence under the Act, it has to bring on

record the contract carriage permit in question. In its absence, no offence could be said to have been proved.

5. Besides, at trial the prosecution has chosen to examine none of the individual passengers said to be travelling in any of the buses. The witnesses examined at trial were only RTO officers. Their evidence was in the nature of hearsay evidence. The travellers in the bus were said to have informed the RTO officers that they were individual passengers and were not booked in a group or a party. If the prosecution wanted to bring the guilt home to the accused in each case, it was necessary for them to examine at least some passenger from each bus to prove the case at trial. Non-examination of any such passenger of the bus in each case has also weighed heavily with the learned appellate Judge in upsetting the conviction in each case.

6. I think the learned appellate Judge has made no mistake in adopting such reasoning. Hearsay evidence cannot ordinarily be relied on for fastening any criminal liability. It was not the case of the prosecution that no passenger of the bus in each case was available for his examination as a witness at trial. In that view of the matter, the learned appellate Judge was justified in not relying on the hearsay evidence.

7. In some two matters non-production of certain documents like the contract carriage permit, the fitness certificate from the insurance company, the RTO Token and the Control Chart was highlighted for the purpose of fastening the criminal liability to the concerned accused. The learned appellate Judge has rightly chosen not to fasten any criminal liability to the concerned accused on that account for the simple reason that under the relevant provisions contained in the Act, the liability to keep all these documents is that of the driver of the vehicle and not of the owner. It was not the prosecution case that the driver had categorically told the RTO officers that the owner of the vehicle did not give the necessary documents to be kept with the driver. The driver of the vehicle in each case has not been prosecuted. If the prosecution wanted to fasten liability to the owner, it could have very well impleaded both the driver and the owner as accused in each case where the relevant documents were not found with the driver. As rightly observed by the learned appellate Judge, the provision is not to the effect that no vehicle shall be caused to be driven or plied without carrying the documents in question. In that view of the matter, the learned appellate Judge was justified in not

fastening any criminal liability to the concerned accused on account of non-production of certain relevant documents.

7. In view of my aforesaid discussion, I am of the opinion that the impugned judgment and order of acquittal passed by the learned appellate Judge in the aforesaid appeals against conviction is quite legal, just and proper and calls for no interference by this Court in these appeals or any of them.

8. I shall fail in my duty if I do not record the note of appreciation for the valuable assistance rendered by learned Advocate Shri Munshi for the respective respondents in the appeals in question. He has been appointed by this Court to assist it on behalf of the respondents in each case who chose to remain ex-parte. It must be said to the credit of learned Advocate Shri Munshi that he got himself prepared to argue out the matter in a very short time.

9. In the result, all these appeals fail. They are hereby dismissed.
